

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 07-2365

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Patrick J. Powers,

Appellant,

v.

UNUM Life Insurance Company of  
America,

Appellee.

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Appeal from the United States  
District Court for the  
Western District of Arkansas.

[UNPUBLISHED]

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Submitted: May 7, 2008

Filed: May 14, 2008

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Before BYE, SMITH, and BENTON, Circuit Judges.

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PER CURIAM.

Patrick J. Powers appeals the district court's<sup>1</sup> order denying his summary judgment motion and dismissing his Employment Retirement Income Security Act lawsuit against UNUM Life Insurance Company of America (UNUM) arising from the denial of continued short-term-disability benefits. Under the abuse-of-discretion standard, which the parties agree applied below, UNUM's decision needed only to be reasonable, that is, supported by substantial evidence. See Dillard's Inc. v. Liberty

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<sup>1</sup>The Honorable Jimm Larry Hendren, Chief Judge, United States District Court for the Western District of Arkansas.

Life Assurance Co. of Boston, 456 F.3d 894, 899 (8th Cir. 2006) (plan administrator’s decision will be reversed only if it was arbitrary and capricious); Norris v. Citibank, N.A. Disability Plan (501), 308 F.3d 880, 883-84 (8th Cir. 2002) (reviewing de novo district court’s application of abuse-of-discretion standard).

We agree with the district court that the decision to deny Powers benefits as of January 11, 2004, was supported by substantial evidence. As of that date Powers did not meet the second prong of the plan’s definition of disabled, i.e., that he was “not working in any occupation.” Given the plan’s plain and unambiguous definition of disability, it is irrelevant why Powers returned to work at a lower-paying position for another employer. We also agree with the district court that the term “gainful occupation” is not relevant because it does not appear in the section of the plan addressing short-term disability, and that the recurrent-disability provision does not apply in these circumstances. Finally, Powers’s remaining arguments (raised for the first time on appeal) are unavailing.

Accordingly, we affirm. See 8th Cir. R. 47B.

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